

(2025) 01 GUJ CK 0028

Gujarat High Court

Case No: Criminal Appeal (Against Conviction) No. 1178 of 2013

Tarunkumar Karsanbhai
Mayavanshi

APPELLANT

Vs

Vs State of Gujarat

RESPONDENT

Date of Decision: Jan. 3, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 209, 313, 374
- Indian Penal Code, 1860 - Section 114, 304(B), 306, 498A
- Dowry Prohibition Act, 1961 - Section 3, 6

Hon'ble Judges: Ilesh J. Vora, J; S.V. Pinto, J

Bench: Division Bench

Advocate: A R Rockey, Hardeep L Mahida, LB Dabhi

Final Decision: Allowed

Judgement

PW 1 â€" Exh.14,"Kamleshbhai Manharbhai Parmar,complainant

PW 2 â€" Exh.16,"Sanjaykumar Chhotelal Saroj, panch witness

PW 3 â€" Exh.17,"Kantaben Fatehsingh Vasava, panch witness

PW 4 â€" Exh.18,"Navinbhai Bhailalbhai Vanand, panch witness

PW 5 â€" Exh.21,Yogeshbhai Manharbhai Parmar

PW 6 â€" Exh.27,Kashiben Manharbhai Parmar

PW 7 â€" Exh.31,"Rohitbhai Bijalbhai Bharwad, panch witness

PW 8 â€" Exh.32,"Amitbhai Arvindbhai Panchal, panch witness

PW 9 â€" Exh.33,"Kamleshbhai Uttambhai Bhatia, panch witness

PW 10 â€" Exh.34,"Manilal Fulabhal Khristi, panch witness

PW 11 â€" Exh.35,Umedlal Moolchand Meena

PW 12 â€" Exh.36,"Tajuddin Badruddin Malek, Police Head Constable

PW 13 â€" Exh.37,"Vishrambhai Lallubhai Pandor, Police Sub-Inspector

PW 14 â€" Exh.39,"Dr. Shitalben Sunderlal Ehari, medical officer

PW 15 â€" Exh.41,"Ramanbhai Bhatlabhai Vasava, Police Station Officer

PW 16 â€" Exh.43,"Balvirsingh Mohanbava Rana, investigation officer

Exh.15,Complaint

Exh.19,Inquest Panchanama

Exh.24,Suicide note by deceased Vaishaliben

Exh.25,Notebook containing handwriting of deceased Vaishaliben

Exh.26,Suicide note by deceased Vaishaliben

Exh.28,Panchanama of place of incident

Exh.29,Panchanama of examination of accused no.1

Exh.30,Panchanama of examination of other accused

Exh.40,Post Mortem report along with certificate

Exh.42,Extract of station diary

Exh.44,Panchanama regarding statement of train guard

Exh.47,"Panchanama of seizure of notebook containing handwriting of deceased Vaishaliben

Exh.48,FSL Report by Handwriting Expert

Exh.49,Letter by FSL for taking articles

Exh.50,Opinion

Exh.52,Letter by Superintendent of Police to FSL

Exh.53,Detailed report by Handwriting Expert

things that were given to me, as a dowry, such as, fridge, T.V., safe box, bed, showcase, sofa- set, gold and silver jewellery, dressing table,"

kitchen set etc., should be given to my parental family, because, I was asked to leave the house and therefore, it would be better that, not a",

single thing of mine remains with the matrimonial home. I wish that bringing up of my daughter Ayushi should be by my husband and he, should care of her. I took this step because, I was tired. Forgive me and please fulfill my wish."

11.5 PW-16 and 17 are the police officials, who had investigated the case and finally chargesheet came to be filed by PW-17. The testimonies of the, police officials did not to discuss in detail, as the entire conviction hinges upon the suicide note Exh. 24 and 26.",

12. Submission on behalf of the appellant " accused :,

12.1 Mr. Hardeep Mahida, the learned counsel appearing for the appellant " accused vehemently submitted that, the trial Court committed a serious",

error in holding the appellant accused the guilty of the offence of cruelty. He would submit that, the trial Court having found the appellant husband not",

guilty for the offence under Sections 304B and 306 of the IPC, ought not to have convicted him for the offence under Section 498A of the IPC on the",

same set of facts and evidence. He would further urge that, the contents of the suicide note do not attract the ingredients of Section 498A of the IPC.",

The close relatives of the deceased, have did not depose that, the dispute arose because the deceased was asked to leave the matrimonial home. That",

in so called suicide note, it is no where mentioned that, who had asked the deceased to leave the house and what was the motive for asking her to",

leave the house. Thus, it was submitted that the prosecution has failed to prove the charges against the appellant accused for the offence under",

Section 498A of the IPC by adducing cogent and sufficient evidence. That, on the date of incident i.e. 30.06.2011, when the incident of suicide took",

place, the deceased was very much present in the matrimonial home. That, not a single day, she was compelled to leave the house and that is not the",

case of the prosecution. Despite of this, the learned trial Court presumed that, the appellant husband could have told the same to the deceased. Thus",

therefore, the learned trial Court has convicted the appellant husband only on the basis of assumption and presumption and same cannot be sustained",

in eye of law. That, the bald statement made by the deceased that, she was asked to leave the house, was being made in the context of things which",

were given to the deceased at the time of her marriage. The deceased, in her suicide note, stated that, the things which were given at the time of",
marriage, should be handed over to her parental family. That, if there was an intention on the part of the appellant " husband to drive away the",
deceased from the maternal home, she would have clarified further on this aspect, which shows that, the said statement was made by her not in",
connection with the alleged act of cruelty, which led her to commit the suicide."

12.2 Mr. Mahida, learned advocate would further submit that, the marriage span was 7 years and 4 months and during the matrimonial life, she never",
filed complaint to anybody nor, the occasion arose to leave the matrimonial home. In the circumstances, he prayed that, the charge of cruelty, against",
the appellant is not proved and established and the judgment of conviction be set aside and the appellant be acquitted of the charge of cruelty.,

13. Submission on behalf of the State;

Mr. L.B. Dabhi, the learned APP appearing for the respondent State has on the other hand, vehemently opposed the appeal. He would submit that, no",
error, not to speak of any error of law, could be said to have been committed by the court below in holding that the appellant " accused guilty of the",
offence of cruelty. He would submit that, the deceased had stated that, she was asked to leave the house and that is why, she committed a suicide",
leaving behind her a minor daughter. The mother of a child never take a drastic step of committing suicide but the hostile situation was created by the,
appellant accused as being husband, he failed to resolve the matrimonial dispute and that is why, the husband held responsible for the alleged act of",
cruelty and harassment. Thus, therefore, it has been urged by the learned APP that, the prosecution has proved its case by adducing cogent evidence",
and that the considering the evidence in its proper prospective, the learned trial Court has rightly convicted and sentence the appellant accused which",
does not warrant interference by this Court. In such circumstances, Mr. Dabhi, learned APP prays that, there being no merits in the appeal filed by",
the appellant accused and same may be dismissed.,

14. Analysis and conclusion ;,

We have considered the rival submissions made by the counsel for the parties and perused the records and proceedings. The point that arise for our,

consideration, is to whether the accused appellant committed acts of cruelty, as defined under Section 498A of the IPC and the learned trial Court",

was justified in convicting the appellant "accused for the offence of cruelty ?,

14.1 The case of the prosecution hinges upon the suicide notes Exh. 24 and 26. As such there is no two suicide notes but deceased wrote two,

identical suicide notes and kept it at the different part of her body. At the cost of repetition, we would like to refer the contents of the suicide note,"

which reads as under ;,

"Hello, my name is Vaishali. My last wish is that, after my death, my dead body should be handed over to my parental family and all the",

things that were given to me, as a dowry, such as, fridge, T.V., safe box, bed, showcase, sofa-set, gold and silver jewellery, dressing table,"

kitchen set etc., should be given to my parental family, because, I was asked to leave the house and therefore, it would be better that, not a",

single thing of mine remains with the matrimonial home. I wish that bringing up of my daughter Ayushi should be by my husband and he,

should care of her. I took this step because, I was tired. Forgive me and please fulfill my wish."

14.2 In the above context, it is useful to refer the provisions of Section 498A of the IPC, which reads as follows :",

"Section 498A: Husband or relative of husband of a woman subjecting her to cruelty.,

[Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with",

imprisonment for a term which may extend to three years and shall also be liable to fine.,

Explanation."For the purposes of this section, "cruelty means"â€",

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life,"

limb or health (whether mental or physical) of the woman; or,

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful,

demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]â€

14.3 In the case on hand, the fact that, deceased wife committed a suicide by jumping in front of moving train. The railway track, where the dead",
body was found is at the throw away distance of the matrimonial home. Admittedly, marriage span was 7 years and 4 months. The marriage was",
solemnized on 09.12.2004. The father of the deceased passed away in the year 2007. During the marriage span, deceased never complained to",
anybody that she was asked to leave the house. On the contrary, the prosecution case is that, she was subjected to harassment mentally and",
physically by the husband and in-laws because, they were not satisfied with the additional demand of cash and jewellery. The learned trial Court, while",
acquitting the accused under Section 304B and 306 recorded that, the allegation of demand of dowry has not been proved and established."

14.4 In order to attract the provisions of Section 498A of the IPC, the cruelty or harassment meted out to the wife by her husband or relatives of her",
husband, should be to the extent that, it become unbearable for her and which is of such a nature as is likely to drive the wife to commit a suicide or",
cause grave injury or danger to life.,

14.5 In view of the statutory provision and upon careful reading of the suicide notes as referred above, the bald statement of the deceased that she",
was asked to leave the house without sufficient evidence to show that the appellant husband had subjected the deceased wife the cruelty which was,
of such a nature as was likely to drive her to commit suicide would not sufficient to satisfy the requirement of Section 498A of the IPC. The mere a,
fact that, she was asked to leave the house, would not amount to "cruelty" as defined under explanation to Section 498A of the IPC. There is no",
evidence against appellant accused to attract the offence under Section 498A of the IPC and therefore, we are of the considered opinion that the",
contents of suicide notes themselves are not sufficient to convict the appellant accused under Section 498A of the IPC. In the opinion of this Court,"
the prosecution has not led sufficient evidence to show that the appellant husband had subjected deceased wife to cruelty and the evidence of suicide,
note falls short of the ingredients of Section 498A. Thus, on perusal of the entire records and evidence in consonance with the statutory provision, the",

prosecution has failed to prove the case beyond all reasonable doubt and the findings of the guilt in the opinion of this Court, are erroneous.",

15. In the result, the Criminal Appeal is allowed. The impugned judgment of conviction and order of sentence dated 30.07.2013 passed in Sessions",

Case No. 8 of 2012 is set aside. The appellant accused is acquitted of the charges leveled against him. The bail bond, if any, shall stand canceled and",

the fine amount, if paid by the appellant accused, shall be refunded to him.",